

CHAPTER NO. 855

SENATE BILL NO. 1471

By Haun, Person, Williams

Substituted for: House Bill No. 884

By Head, Newton, Langster, Kent, Ralph Cole, Patton, Ford, Whitson, Ronnie Davis, Brenda Turner, Walker, Dunn, Sharp, Curtiss, Hagood, Bittle, Wood, Sargent, Davidson, McDonald, Garrett, Montgomery

AN ACT To amend Tennessee Code Annotated, Title 40, Chapter 33, Part 2 and Title 55, Chapter 10, Part 4, relative to alcohol and drug-related criminal offenses.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 55-10-403(c), is amended by adding the following as a new subdivision (4):

(4) Notwithstanding any other provision of law to the contrary, if a person convicted of a violation of § 55-10-401, has a prior conviction for a violation of § 55-10-401 within the past five (5) years, the court shall order such person to undergo a drug and alcohol assessment and receive treatment as appropriate. Unless the court makes a specific determination that the person is indigent, the expense of such assessment and treatment shall be the responsibility of the person receiving it. Notwithstanding the provisions of § 55-10-403(a)(4)(B), if the court finds that the person is indigent, the expense or some portion of the expense may be paid from the alcohol and drug addiction treatment fund established in § 40-33-211(c)(2) pursuant to a plan and procedures developed by the Department of Health.

SECTION 2. Tennessee Code Annotated, Section 55-10-412(l), is amended by deleting the subsection in its entirety and by substituting instead the following:

(l)(1) If a person convicted of a violation of § 55-10-401, has a prior conviction for a violation of § 55-10-401 within the past five (5) years, the court shall order such person to operate only a motor vehicle or motorcycle, after the license revocation period, which is equipped with a functioning interlock device. The court shall also order such device to be installed on all vehicles owned or leased by the person at such person's own expense for a period of six (6) months.

(2) Any person subject to the provisions of subdivision (1) may, solely in the course of his employment, operate a motor vehicle or motorcycle, which is owned or provided by his employer, without installation of an ignition interlock device, if:

(A) The court expressly permits such operation;

(B) The employer has been notified of such driving privilege restriction; and

(C) Proof of that notification is within the vehicle.

This subdivision shall not apply if such employer is an entity wholly or partially owned or controlled by the person subject to the provisions of this subsection.

SECTION 3. Tennessee Code Annotated, Section 40-33-211(c), is amended by adding the following new subdivision:

(3) If the general sessions or criminal court judge makes a specific finding that the person is indigent and that it is in the best interest of such person and the public, monies in the "alcohol and drug addiction treatment fund" may be used to pay the reasonable cost of leasing, buying, installing, monitoring and maintaining an ignition interlock device that is ordered pursuant to § 55-10-412(l). However, such device shall not be utilized in lieu of treatment of such person.

SECTION 4. Tennessee Code Annotated, Section 40-33-211(f), is amended by adding the following new subdivision:

(3) If the general sessions or criminal court judge makes a specific finding that the person is indigent and that it is in the best interest of the individual and the public, monies in the "alcohol and drug addiction treatment fund" may be used to pay the reasonable cost of leasing, buying, installing, monitoring and maintaining an ignition interlock device that is ordered pursuant to § 55-10-412(l). However, such device shall not be utilized in lieu of treatment of such person.

(4) For the purpose of determining the value of early assessment and treatment, the Department of Health may establish a pilot program in Shelby County for a total of up to fifty (50) residents of Shelby County who violate their DUI probation with a subsequent DUI arrest. The judge of the court may order such individuals to be assessed and treated utilizing the fund and guidelines established by the Department of Health for the pilot program. The pilot program may begin on October 1, 2002, and may continue through September 30, 2004. On September 30 in the years 2003, 2004, and 2005, the Shelby County court shall issue a report to the Department of Health documenting any incidence of recidivism by participants in the pilot program. Provided, however, no funds from the alcohol and drug addiction treatment fund established in subsection (c)(2) of this section shall be used for the Shelby County early assessment and treatment pilot program authorized by this subdivision unless an improvement request is included in the Appropriations Act enacted by the 2002 General Assembly.

SECTION 5. Tennessee Code Annotated, Section 55-10-403(d)(1)(B)(i)(b), is amended by deleting the item in its entirety and substituting instead the following:

(b) The person does not have a prior conviction for a violation of § 55-10-401 or § 55-10-418 within ten (10) years of the present violation, or of § 39-13-213(a)(2), § 39-13-218, or § 39-13-106, in this state, or a similar offense in another jurisdiction.

SECTION 6. Tennessee Code Annotated, Section 55-10-403, is amended by adding the following new subpart (4) to subsection (d):

(4)(A) Notwithstanding the provisions of subdivision (3), the trial judge may order the issuance of a restricted motor vehicle operator's license in accordance with § 55-50-502 to any person whose motor vehicle operator's license has been revoked pursuant to subsection (a) for a period of two (2) years and who has a prior conviction for a violation of § 55-10-401 or § 55-10-418, in this state or a similar offense in any other jurisdiction. Provided, however, such person shall not be eligible for and the court shall not have the authority to grant the issuance of a restricted motor vehicle operator's license until the expiration of a one (1) year revocation period. Such restricted license may be issued for the same purposes set out in (d)(1)(A) of this subsection.

(B) If the court orders the issuance of a restricted motor vehicle operator's license pursuant to this subpart, the court shall also order such person to operate only a motor vehicle or motorcycle that is equipped with a functioning interlock device. The court shall also order such device to be installed on all vehicles owned or leased by the person at such person's own expense for the entire period of the restricted license and for a period of six (6) months after the license revocation period has expired as required in § 55-10-412(l).

SECTION 7. Tennessee Code Annotated, Section 55-10-401(a)(2), is amended by deleting the language "ten one-hundredths of one percent (.10%)" and by substituting instead the language "eight-hundredths of one percent (.08%)".

SECTION 8. Tennessee Code Annotated, Section 55-10-406(f), is amended by deleting the language "or adult driving while impaired under § 55-10-418".

SECTION 9. Tennessee Code Annotated, Section 55-10-408, is amended by deleting the section in its entirety and by substituting instead the following:

Section 55-10-408. For the purpose of proving a violation of § 55-10-401(a)(1), evidence that there was, at the time alleged, eight-hundredths of one percent (.08%) or more by weight of alcohol in the defendant's blood shall create a presumption that the defendant's ability to drive was sufficiently impaired thereby to constitute a violation of § 55-10-401(a)(1).

SECTION 10. Tennessee Code Annotated, Section 55-10-418, is amended by deleting the section in its entirety and by substituting instead the following:

Section 55-10-418. (a) Effective July 1, 2003, the offense of adult driving while impaired is repealed.

(b) Nothing in the repeal of the offense of adult driving while impaired shall be construed to prohibit or prevent the use of any conviction for such offense occurring prior to July 1, 2003, for any of the purposes set out in Tennessee Code Annotated, §§ 55-10-403(d)(1)(A)(ii), 55-10-403(d)(1)(B)(i)(b), 55-10-403(d)(3), 55-10-403(g)(2), 55-10-403(o), 55-10-406(a)(3)(A), 55-10-603(2)(A)(x) or 55-50-502(c)(3)(ii).

SECTION 11. Tennessee Code Annotated, Section 55-10-403, is amended by adding the following language as a new, appropriately designated subsection:

(q)(1) In addition to all other fines, fees, costs and punishments now prescribed by law, an alcohol and drug addiction treatment fee of one hundred dollars (\$100) shall be assessed for each conviction for a violation of § 55-10-401.

(2) All proceeds collected pursuant to subdivision (1) shall be transmitted to the Commissioner of the Department of Health for deposit in the special "alcohol and drug addiction treatment fund" administered by such department.

SECTION 12. Tennessee Code Annotated, Section 55-10-403, is further amended by deleting the fifth sentence of subsection (a)(1) and substituting instead the following:

Upon the conviction of a person on the second offense only, a judge may sentence such person to participate in a court approved alcohol or drug treatment program.

SECTION 13. Tennessee Code Annotated, Section 55-10-403, is further amended by deleting the first sentence of subsection (a)(4)(A) and substituting instead the following:

If the court orders participation in an inpatient alcohol and drug treatment program pursuant to subdivision (a)(1), such treatment program shall not exceed a period of twenty-eight (28) days.


SECTION 14. Tennessee Code Annotated, Section 40-33-211, is amended by adding the following to the end of subsection (c)(2):

The alcohol and drug addiction treatment fund shall be administered pursuant to public necessity rules promulgated by the Department of Health which shall establish criteria for application of the funds.


SECTION 15. Sections 1-4 of this act shall take effect October 1, 2002, the public welfare requiring it, and shall apply to all applicable violations of the provisions of Tennessee Code Annotated, Section 55-10-401 occurring on or after such date. Sections 5-11 of this act shall take effect on July 1, 2003, the public welfare requiring it. Sections 12, 13, 14, and 15 of this act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: June 27, 2002


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 4th day of July 2002


DON SUNDQUIST, GOVERNOR